

McNAMARA, DODGE, NEY, BEATTY, SLATTERY, PFALZER, BORGES & BROTHERS LLP

ATTORNEYS AT LAW  
P.O. BOX 5288, WALNUT CREEK, CA 94596  
TELEPHONE: (925) 939-5330

JAMES V. FITZGERALD, III (State Bar No. 55632)  
NOAH G. BLECHMAN (State Bar No. 197167)  
McNAMARA, DODGE, NEY, BEATTY, SLATTERY,  
PFALZER, BORGES & BROTHERS LLP  
1211 Newell Avenue  
Post Office Box 5288  
Walnut Creek, CA 94596  
Telephone: (925) 939-5330  
Facsimile: (925) 939-0203  
  
Attorneys for Defendant  
COUNTY OF CONTRA COSTA, JOSHUA PATZER, and  
WARREN RUPF

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHAWN DAY, individually and as  
successor in interest to the Estate of Steffen  
Matthew Day,

Plaintiff,

vs.

COUNTY OF CONTRA COSTA;  
JOSHUA PATZER; WARREN RUPF, and  
Does 1 through 50, et al.,

Defendants.

Case No. C07-4335 PJH

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: November 29, 2007  
Time: 2:30 p.m.  
Before: Hon. Phyllis J. Hamilton  
Courtroom: 3, 17th Floor

Plaintiff SHAWN DAY ("Plaintiff") and Defendants, COUNTY OF CONTRA COSTA, JOSHUA PATZER and WARREN RUPF ("Defendants") hereby jointly submit this Joint Case Management Statement pursuant to Federal Rules of Civil Procedure 16 and 26, the Civil Local Rules of the Northern District of California, and this Court's Standing Order.

**1. Jurisdiction and Service**

The parties agree that this Court has subject matter jurisdiction over all claims in this action pursuant to 28 U.S.C. §§ 1331 and 1343. The parties further agree that this Court has personal jurisdiction over all parties, and that venue in the Northern District of California is proper. All parties have been served and have appeared.

1           **2.     Relevant Facts**

2           This is a wrongful death action arising out of the death of decedent Steffen Day  
3           ("Decedent") on or about the evening of August 14<sup>th</sup> or 15<sup>th</sup>, of 2006. On that evening, Decedent  
4           was driving a vehicle with two passengers in the area of Bay Point and Pittsburg in Contra Costa  
5           County. Two Deputies of the Sheriff's Department spotted Decedent's vehicle which was driving  
6           erratically and followed the vehicle. The Deputies followed the vehicle until it stopped in a  
7           driveway. The Deputies noted that the vehicle did not have any lock on the car's trunk. Officers  
8           approached the vehicle and noted that the vehicle Decedent was driving had no key in the  
9           ignition. When the Deputies directed Decedent out of the vehicle, Decedent initially complied  
10          and then took flight, running towards an adjacent home. Defendant Deputy Patzer ("Patzer")  
11          followed the fleeing Decedent.

12          Plaintiff contends that after Decedent jumped over several fences with Patzer in pursuit,  
13          without justification or provocation, less than one minute after Decedent first ran from Deputies,  
14          Patzer intentionally fired his service revolver at Decedent in the dark fenced area along side of the  
15          house at 26 Galleon Way. The one gun shot hit Decedent in the abdomen and Decedent later died  
16          as a result of the gunshot wound by Patzer.

17          Conversely, Defendants contend that the detention of Decedent was proper and the  
18          shooting was also justified and lawful. More specifically, when Contra Costa County Deputy  
19          Sheriff Deputies Patzer and Vorhauer were driving together in a marked Sheriff's patrol vehicle  
20          in the Bay Point area, they observed a truck and a Mustang driving erratically on Willow Pass  
21          Road. The vehicles were following each other, driving erratically, and both vehicles had driven  
22          on the wrong side of the road. The Deputies followed the Mustang to take down the license plate  
23          and noted that the trunk lock on the Mustang was punched which suggested to them that the car  
24          might be stolen. As the Deputies were following the Mustang, it pulled into a driveway and the  
25          occupants of the car began making furtive movements and handing stuff to the passenger in the  
26          back seat. The Deputies turned their white spotlight on the vehicle and the occupants continued  
27          to make furtive movements. When Patzer approached the vehicle, he observed that the ignition  
28          appeared to be punched which was another fact that suggested to him that the car was stolen. At

1 this time, the driver of the vehicle, Decedent, walked to the front of the vehicle and then Decedent  
 2 suddenly ran and jumped over a wall on the east side of the driveway. Patzer yelled "foot  
 3 pursuit" and gave chase.

4 After a substantial chase, Patzer caught up and grabbed Decedent as Decedent was trying  
 5 to jump another fence. Both Patzer and Decedent fell forward through a gate, causing Patzer to  
 6 lose his flashlight and landing on his knees. Decedent then violently assaulted and battered  
 7 Patzer. During the altercation, Decedent got the upper hand, continued to violently assault and  
 8 batter Patzer and failed to retreat and/or flee when Decedent was able to do so. Fearing for his  
 9 life and to defend himself, Patzer fired one round at Decedent to stop Decedent's violent assault  
 10 and battery. This turned out to be a fatal shot.

11 The principal factual disputes in this case will be as follows:

12 (a) Whether the vehicle Decedent was driving showed signs of being stolen, including  
 13 the fact that no key was in the ignition of the vehicle and the trunk lock was missing;

14 (b) What occurred during the foot pursuit by Patzer of Decedent;

15 (c) Whether Decedent violently resisted arrest and/or assaulted and/or battered Patzer;  
 16 and

17 (d) Whether Patzer was in fear of his life or of suffering serious injury during the  
 18 altercation with Decedent along side of the house at 26 Galleon Way.

### 19 **3. Legal Issues**

20 The parties dispute the following legal issues:

21 (a) Whether Defendants had reasonable suspicion and/or probable cause to  
 22 detain/stop/arrest Decedent and his passengers;

23 (b) Whether Patzer used force in an objectively reasonable manner in attempting to  
 24 control and/or arrest Decedent; and

25 (c) Whether Patzer's use of deadly force was justified under the circumstances; and

26 (d) Whether the Defendant Deputies are entitled to qualified immunity.  
 27  
 28

**4. Motions**

There are no outstanding motions and no motions have previously been filed in this action. It is unclear about whether or not any motions are anticipated by the parties, though Defendants may file a dispositive motion in this matter.

**5. Amendment of Pleadings**

At this time, the parties do not anticipate needing to amend their respective pleadings.

**6. Evidence Preservation**

The parties mutually request that each side take all necessary precautions to ensure that all potentially relevant discovery (whether in electronic, hard copy, or graphic form) be preserved.

**7. Disclosures**

By the time of this case management conference, the parties will have mutually participated in exchanging initial disclosures per FRCP 26, including relevant witnesses and documentation.

**8. Discovery**

The parties anticipate serving written discovery and pointed documents requests in this action. Plaintiff anticipates noticing the depositions of Defendants, including Defendant Patzer and perhaps other relevant Deputies. Defendants will take Plaintiff's deposition, as well as take the depositions of potential percipient witnesses. Other discovery is unknown at this point in time.

**9. Class Actions**

This case is not a class action.

**10. Related Cases**

There are no related cases.

**11. Relief**

Plaintiff seeks compensatory damages, general damages and punitive damages, as well as attorney's fees and any further relief as the Court may deem proper.

**12. Settlement and ADR**

The parties have not yet engaged in any formal settlement procedures as of yet.

**13. Consent to Magistrate Judge For All Purposes**

The parties do not consent to the assignment of this action to a United States Magistrate Judge for trial.

**14. Other References**

No references are appropriate in this action.

**15. Narrowing of Issues**

The parties anticipate that through discovery, both written and oral, issues in this matter will be narrowed in preparation for trial. At this point, it is too early determine how best to present evidence at trial. Defendants may request that liability and damages issues be bifurcated at trial.

**16. Expedited Schedule**

This is not applicable and appropriate in this matter.

**17. Scheduling**

The parties propose the following proposed schedule in this matter, per the availability of the Court:

<b><u>Event</u></b>	<b><u>Proposed Deadline</u></b>
Deadline to add additional parties or claims, without leave	December 28, 2007
Date of Next Case Management Conference	April 18, 2008
Completion of fact discovery	May 23, 2008
Expert Disclosure Deadline	June 20, 2008
Rebuttal Expert Disclosure Deadline	July 8, 2008
Completion of Expert Discovery	August 8, 2008
Last Day to Hear Dispositive Motions	September 8, 2008
Pre-Trial Conference Statement Due Filed	September 29, 2008
Pre-Trial Conference (subject to Court's availability)	October 13, 2008
Trial Date (subject to Court's availability)	November 24, 2008

McNAMARA, DODGE, NEY, BEATTY, SLATTERY, PFALZER, BORGES & BROTHERS LLP  
ATTORNEYS AT LAW  
P.O. BOX 5288, WALNUT CREEK, CA 94596  
TELEPHONE: (925) 939-5330

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**18. Trial**

This case will be tried before a jury. The parties anticipate that the trial will last five to seven (5-7) Court days.

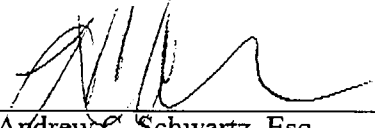
**19. Disclosure of Non-party Interested Entities or Persons**

The parties have no such interest or interests to report.

Dated: November 20, 2007

CASPER, MEADOWS, SCHWARTZ & COOK

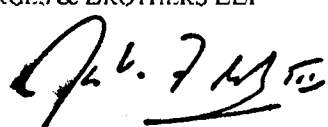
By:

  
Andrew C. Schwartz, Esq.  
Larry Cook, Esq.  
Attorneys for Plaintiff  
SHAWN DAY

Dated: November 20, 2007

McNAMARA, DODGE, NEY, BEATTY, SLATTERY,  
PFALZER, BORGES & BROTHERS LLP

By:

  
James V. Fitzgerald, III  
Noah G. Blechman  
Attorneys for Defendant  
COUNTY OF CONTRA COSTA, JOSHUA PATZER,  
and WARREN RUPF